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**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

JOHN WORTHINGTON,
Appellant

V.

WEST NET,
Respondent

APPELLANT'S AMENDED OPENING BRIEF

JOHN WORTHINGTON
4500 SE 2ND PL
RENTON, WA.98059
425-917-2235

ORIGINAL

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I. ASSIGNMENTS OF ERROR

Assignments of Error.

The trial court erred in granting the defendant's Motion to dismiss on June 15, 2012, and then erred again in the denial of Worthington's Motion to Reconsider on June 27,, 2012.

Issues Pertaining To Assignments of Error

- A. Whether WEST NET is the "functional equivalent" of a public agency subject to the PRA.
- B. Whether the WEST NET interlocal agreement could exempt WEST NET from the PRA.

II. STATEMENT OF THE CASE

This case arises out of appellant John Worthington's request for public records from the West Sound Narcotics Enforcement Team, (Hereafter "WEST NET") pursuant to the Public Records Act, (Hereafter "PRA"), RCW Chapter 42.56. This is Worthington's second appearance in the Washington State Court of Appeals for Division II, regarding a public records request involving a raid on his residence in January of 2007. In the first case, (Worthington v. Washington State Patrol No. 38697-6-11), the Appellate court for Division II held that WSP had no records of the raid and that the DEA had all the documents of the raid. Years later Worthington received public records showing that the DEA raid was a hoax and that WEST NET conducted the raid and actually sent the file for investigation

number W007-001 to the Washington State Patrol's IAD division for them to forward to the Office of Financial Management to investigate Worthington's tort claims. On February 5, 2010, Worthington followed up on these newly acquired records and attempted to get more records from WEST NET. WEST NET responded to the request but failed to abide fully by the PRA, and did not provide a redaction log. WEST NET provided some records 19 months later, then refused to honor the PRA.

Records Request —February 5, 2010: Records request for all documents submitted to WEST NET, regarding January 12, 2007 raid on Worthington.

On February 5, 2010, Worthington made the following email request for public records. (CP 15-18) On March 2, 2010, Lt. Kathy Collings responded by letter for Dave White, a WEST NET policy board member, that the documents requested could not be sent pursuant to RCW 10.97.050, but Worthington could view the documents in person at the Kitsap County Sheriff's office. In this response, there was no privilege log provided to Worthington.(CP 19-23)

On March 26, 2010 Worthington went to the Kitsap County Sheriff's office to view the documents, and was presented a stack of papers to view. Worthington requested to copy the documents but was refused permission to do so, and no privilege log had been provided to Worthington. In October of 2010, Worthington became aware of a version of the West Net general report of the raid on his

residence on 1/12/2007. After viewing these documents it became clear that WEST NET had not allowed Worthington to view all of the documents sent to WEST NET. WEST NET also failed to provide a redaction log and remained silent on records they did have.

In late December of 2010, the Washington State Patrol¹ sent Worthington a 226 page West Net General Report, after Worthington had proved that they had the documents sent to them as part of a tort claims investigation by the Office of Financial management. In this 226 page report were NCIS agent Salazar's reports of the raid which were not shown to Worthington on March 26, 2010. From December 2010 to May of 2011, Worthington renewed his efforts to get a complete disclosure of the records of the January 12, 2007 raid on his residence which he requested on February 5, 2010.

On March 6, 2011, Worthington was sent a response to those renewed attempts to obtain full disclosure of the February 5, 2010 public records request. (CP 24-28) This response showed that Worthington was not sent a raid plan, and emails to and from the U.S. Attorney's office, as well as an email from a TNET participating member.

Records Request —On May 23, 2011: Records request submitted to WEST NET, regarding January 12, 2007 raid on Worthington.

¹ In 2008-2009 the WSP claimed they had no records of Worthington's arrest, and that all of the documents were in the possession of the DEA. (See Worthington v. Washington State Patrol Case No. 38697-6-11.

On May 23, 2011, Worthington sent a public records request directly to “WEST NET” administrative assistant Kathy Chittenden, which was responded to by Kathy Collings for Dave White, a WEST NET board member. (CP 33)

On July 28 2011, the Defendant sent an email and letter with a privilege log to Worthington indicated they would release 539 pages of documents which should have been released in response to several previous requests, which indicated they previously did not comply with the Washington State public records act.(CP 35)

On July 29, 2011, the defendant informed Steve Sarich , in response to his mirror request for records of WEST NET investigation file W07-001, that 748 records would be released to him, which indicated that Worthington did not get all the documents contained in investigation file W007-001. (CP 38) On August 9, 2011, the defendant WEST NET allowed Worthington and Sarich to view the documents in the sheriff’s office, but redacted nearly the entire raid/safety plan. (CP 41-48)

On August 15, 2011, Worthington challenged a redaction of several pages which relied on RCW 42.56.240 (1), and asked for the documents to be released without redactions. (CP 41) On August 18, 2011, the defendants responded they would not redact the documents identified in the redaction log. (CP 50)

Records Request —On September 12, 2011: Records request submitted to WEST NET, regarding a document which had not been provided to Worthington

On September 12, 2011, Worthington requested a complete copy of an

email that was disclosed on August 9, 2011. (CP 53) WEST NET responded on September 21, 2011, and requested 30-45 days to respond. WEST NET never responded and Worthington had to go to the City of Bonney Lake to get a complete copy of the email he was requesting. It is clear that WEST NET withheld the email, then illegally altered the public record before it was given to Worthington and still has not provided it to Worthington (CP 53-56)

Worthington files a PRA review of an agency action

Worthington timely filed suit against WEST NET on December 8, 2011, alleging WEST NET failed to provide privilege log for Worthington's February 5, 2010 PRA Request, and for failing to provide Worthington with hundreds of PRA documents, while also redacting an entire document. In Worthington's public records dispute with the Kitsap County Superior court, WEST NET filed a motion to dismiss based on the claim WEST NET was immune from suit. Worthington replied to the motion to dismiss and argued WEST NET met the criteria in the Telford factors. On April 23, 2012, the trial court agreed with Worthington and denied WEST NET's motion to dismiss. (CP 86)

WEST NET filed a motion for reconsideration, (CP 114-120) and claimed the WEST NET interlocal agreement had language that prevented WEST NET from being subject to the PRA. On June 15, 2012, the trial court agreed that WEST NET was immune from the PRA, and dismissed Worthington's case. (CP 94-95)

On June 22, 2012, Worthington filed a motion to reconsider, (CP 96-99) which the court denied on June 27, 2012. (CP 100-102) Worthington files this timely appeal of the trial courts orders.

III. ARGUMENT

The Public Records Act “is a strongly worded mandate for broad disclosure of public records.” (Progressive Animal Welfare Society v. UW (PAWS II)), 125 Wn.2d 243, 251, 884 P.2d 592 (1995) (quoting Hearst Corp. v. Hoppe, 90 Wn.2d 123, 127, 580 P.2d 246 (1978)). ‘The Act’s disclosure provisions must be liberally construed and its exemptions narrowly construed’. PAWS II, 125 Wn.2d at 251. Courts are to take into account the Act’s policy “that free and open examination of public records is in the public interest, even though such examination may cause inconvenience or embarrassment to public officials or others.” RCW 42.56.550 (3). This Court’s review of the trial court’s ruling on summary judgment is de novo. Smith v. Okanogan County, 100 Wn. App. 7, 10, 994 P.2d 857 (2000).

A. Whether WEST NET is the "functional equivalent" of a public agency subject to the PRA.

The four factors used in Telford v. Thurston County Board of Commissioners, 95 Wn. App. 149, 974 P.2d 886, review denied, 138 Wn.2d 1015 (1999) to evaluate an entity's status under the PRA are (1) the entity's governmental function, (2) the entity's government funding, (3) government

control over the entity, and (4) the entity's origin. Telford, 95 Wn. WEST NET functions as a government entity, and has a policy board which makes decisions on policies enforced state wide. WEST NET also receives state and local funding to conduct its statewide affairs and has a WEST NET bank account with over 1 million dollars in cash and assets. WEST NET is also government controlled by a State Administering Agency (SAA) Washington State Department of Commerce, the host contracting agency the Kitsap County Sheriff, and is supervised by the Washington State Patrol. WEST NET's origin arises from two state laws, RCW39.34, The Interlocal Cooperation Act, and RCW 10.93, The Washington Mutual Aide Peace Officers Powers Act. WEST NET qualifies as a "public agency" subject to the PRA under RCW 42.56.010 (1), because it has a policy board with state participating members,(CP 73-76) and falls under the "catchall provision" of "other local Agency", as shown below:

(1) "Agency" includes all state agencies and all local agencies. "State agency" includes every state office, department, division, bureau, board, commission, or other state agency. "Local agency" includes every county, city, town, municipal corporation, quasi-municipal corporation, or special purpose district, or any office, department, division, bureau, board, commission, or agency thereof, or other local public agency.

As shown above, WEST NET meets all the criteria to be considered the "functional equivalency" of a government agency for the purposes of the

the PRA. The trial court properly ruled the Telford factors applied to WEST NET in the denial of WEST NET's motion to dismiss. (CP 86-87) The trial court then erred by reversing that decision thereby exempting WEST NET from the PRA.

B. Whether the WEST NET interlocal agreement could exempt WEST NET from the PRA.

According to RCW 42.56.030, the Washington State Public Records Act governs all other acts, including the acts, RCW 10.93, and RCW 39.34, which was relied upon by the trial court, in granting WEST NET's motion for reconsideration.

**RCW 42.56.030
Construction.**

The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may maintain control over the instruments that they have created. This chapter shall be liberally construed and its exemptions narrowly construed to promote this public policy and to assure that the public interest will be fully protected. In the event of conflict between the provisions of this chapter and any other act, the provisions of this chapter shall govern.

As shown above, it was not possible for the statutes, RCW10.93, and RCW 39.34, to govern the PRA. The trial court erred when it reversed its initial decision that the PRA applied to WEST NET and when it failed to recognize Worthington's references to RCW 42.56.030 in his motion to reconsider. (CP 96-99)

V. CONCLUSION

Based on the aforementioned arguments, WEST NET has been shown to be the functional equivalent of a government agency and should be subject to the PRA. The PRA governs over all other acts, including the two statutes the trial court and WEST NET relied upon to exempt WEST NET from the PRA. The two statutes that created the WEST NET interlocal agreement, RCW10.93, and RCW 39.34, does not authorize a Washington State secret police and does not exempt WEST NET from the PRA.

Worthington respectfully requests that the appellate court reverse the trial courts order dismissing Worthington's PRA complaint, and remand this PRA case back to the trial court with orders to properly apply the PRA to WEST NET.

Dated this 2nd Day of January, 2013.

By 
John Worthington, pro se /Appellant
4500 SE 2nd PL
Renton WA.98059

Certificate of Service

I certify that on the date and time indicated below, I caused to be served
Via U.S. Mail to WEST NET, a copy of the documents and pleadings listed below
upon the attorney of record for the defendants herein listed and indicated below.

1. APPELLANT’S AMENDED OPENING BRIEF

IONE GEORGE
WEST NET
614 Division Street MS-35A
Port Orchard, WA 98366

I declare under penalty of perjury under the laws of the United States that the
foregoing is True and correct.

Executed on this 2nd day of January, 2013

BY John Worthington
John Worthington pro se /Appellant
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